

Update: Criminal Procedure Monograph 6—Pretrial Motions (Revised Edition)

6.11 Notice and Pleading Requirements for Asserting an Alibi Defense

Insert the following case summary at the bottom of page 12:

A trial court properly excluded testimony from a defense witness who would have testified that the defendant was not present at the time a codefendant expressed his intention to rob the victims. *People v Bell*, ___ Mich App ___, ___ (2003). Exclusion of the witness' testimony was proper because the defendant failed to satisfy the requirements of the alibi notice statute. *Id.* at _____. The defendant argued that the notice provision in the statute was inapplicable because the proposed witness was not an alibi witness since the witness' testimony did not concern the defendant's whereabouts at the time the armed robbery was committed. *Id.* at _____. The Court of Appeals affirmed the trial court's ruling that the defense witness was indeed an alibi witness whose testimony was intended to provide the defendant with an alibi for the charge of *conspiracy* to commit armed robbery. *Id.* at _____.

6.19 Motion to Suppress Confession for Violation of Sixth Amendment Right to Counsel

Insert the following case summary on page 38 immediately before the last full paragraph:

Where police officers initiated contact with the defendant regarding a polygraph examination after the defendant was arraigned and appointed counsel and while the defendant remained in custody, the defendant's statements were obtained in violation of his Sixth Amendment right to counsel and should have been suppressed. *People v Harrington*, ___ Mich App ___, ___ (2003). The Court concluded that the trial court improperly admitted the defendant's inculpatory statements because "[w]hen a defendant invokes the Sixth Amendment right to counsel, any subsequent waiver of this right in a *police-initiated custodial interview* is ineffective with respect to the charges filed against the defendant." *Id.* at ___ (emphasis in original). The Court found the police officers' conduct similar to the unconstitutional conduct of officers in *People v Anderson (After Remand)*, 446 Mich 392 (1994).

6.20 Motion for Substitution of Counsel for Defendant or Motion to Withdraw as Counsel for Defendant

Insert the following language on page 40 immediately before Section 6.21:

By an order entered on October 2, 2003, the Michigan Supreme Court vacated the Court of Appeals opinion discussed in the July 2003 update. *People v Fett*, ___ Mich ___ (2003). The Supreme Court explained, “Defendant cites to no authority, nor is this Court aware of any authority, holding that, under the facts of this case, the right to the effective assistance of counsel is violated where a defendant is represented by her attorney of choice, but is denied a *second* attorney of choice.” *Id.* According to the Court, the trial court did not abuse its discretion in denying the defendant’s motion for additional counsel, and the Court of Appeals erred in vacating the defendant’s conviction on that basis. *Id.* The Supreme Court remanded the case to the Court of Appeals for consideration of the defendant’s remaining claims. *Id.*